

28.1383(A)(3)-2

Aggravated [Driving/Actual Control] With An Alcohol Concentration Of [0.10][0.08] Or More Within Two Hours Of Driving While There Is A Person Under The Age Of Fifteen Years In The Vehicle

The crime of aggravated [driving/actual physical control] with an alcohol concentration of [0.10][0.08] or more within two hours of driving while there is a person under the age of fifteen years in the vehicle requires the proof of the following:

1. The defendant committed the offense of [driving/actual physical control] with an alcohol concentration of [0.10][0.08] or more within two hours of driving; and
2. A person under fifteen years of age was in the vehicle at the time of the offense.

SOURCE: A.R.S. §§ 28-1383(A)(3) & -1381(A)(2) (statutory language as of September 1, 2001).

USE NOTE: Use this instruction in conjunction with Instruction 28.1381(A)(2).

Use the language in the brackets as appropriate to the facts. Under the influence offenses can be committed while driving or while in actual physical control of a vehicle. Use the [driving/actual physical control] choices in brackets as appropriate to the facts. If there is only evidence of driving, do not include actual physical control in the instruction. If there is no issue of driving, do not refer to driving in the instruction. In some cases there may be issues of actual physical control and circumstantial evidence of driving. In those cases, the jury instruction should include both choices. See *State ex rel O'Neill v. Brown (Juan-Pascal, real party in interest)*, 182 Ariz. 525, 898 P.2d 474 (1995) (police observed cloud of dust in field and then found defendant holding the keys and seated in the stopped car).
